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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/566,475	01/31/2006	Roberto Conti	02334900313	5100
4372	7590	01/02/2009	EXAMINER	
ARENT FOX LLP 1050 CONNECTICUT AVENUE, N.W. SUITE 400 WASHINGTON, DC 20036			DURAND, PAUL R	
			ART UNIT	PAPER NUMBER
			3721	
			NOTIFICATION DATE	DELIVERY MODE
			01/02/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

DCIPDocket@arentfox.com

IPMatters@arentfox.com

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### Office Action Summary

**Application No.**

10/566,475

**Applicant(s)**

CONTI, ROBERTO

**Examiner**

PAUL R. DURAND

**Art Unit**

3721

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 12-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 1/31/06 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
2. Claims 12-18, 20, 21 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Romagnoli (US 4,437,294) in view of Rossi (US 4,747,250).

In claims 12 and 23, Romagnoli discloses the invention as claimed including a device for forming pods comprised of a station 2, for feeding product 3, into at least one forming impression 5, defining a single dose of the product and made in means (generally indicated by drum 1), for forming a respective compressed disk 16 (See entire document).

What Romagnoli does not disclose is the use of a tamping device and a reciprocating piston which rotates about a reciprocating axis. However, Rossi teaches that it is old and well known in the art to provide a forming mechanism for forming infusion pods comprised of tamper mechanism 74, moving along a reciprocating axis and a rotating rod 76, which rotates around a reciprocating axis of the tamper device for the purpose of compacting and shaping a quantity of product to be packaged (see figures 1, 2 and col. 4, line 27-51).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the invention of Romagnoli with the tamping device and rotational means as taught by Rossi for the purpose of compacting and shaping a quantity of product to be packaged.

In claim 13, Romagnoli discloses the invention as claimed including the forming impression 5, is moved by the means 1, along a circular path "f" (See figures 1 and 3).

In claim 14, Romagnoli discloses the invention as claimed including supporting station 12 for supporting and feeding filter material 9 (See figure 1).

In claim 15, Romagnoli discloses the invention as claimed including the product feed station comprised of an arc shaped fixed hopper 2, facing a revolving drum 1 (See figures 1 and 3).

In claim 16, Romagnoli discloses the invention as claimed including revolving drum 1, equipped with a plurality of pistons 7, arranged radially on the surface of the drum (8) and having a hollow head (generally shown by the bevel portion in figure 3) forming an impression and designed to receive a dose of the product fed by the feed station, radial drive means (not shown), imparting synchronized movements to the pistons (See entire document).

In claim 17, Romagnoli discloses the invention as claimed including cam means including profile 22, engaged by follower 21 attached to each piston assembly, connecting rod 20, attached to the cylinder 7 (See figures 1-3).

In claim 18, Romagnoli discloses the invention as claimed including the cam means causing each single piston to be positioned according to movements referenced to a relative position or angular section of the circular path "f" and corresponding to a first arc-shaped path section where the piston 7 is radially retracted towards the drum 1 in such a way that the piston moves into a product dosing configuration when it reaches a point corresponding to its bottom dead centre, a second arc-shaped path section for

dosing where the piston is initially at the bottom dead centre, in such a manner as to collect as much product as possible in the head, and moves in a radial direction towards the outside of the drum until it reaches the endpoint of the feed station, where there is a wall leveling off the product accommodated in the impression, a third arc-shaped path section for tamping the disc where the piston moves radially towards the outside of the drum and against a stop wall corresponding to its top dead centre where it remains until it starts and a fourth arc-shaped path section where the piston moves back up in order to facilitate detachment of the disc (See entire document).

In claim 20, Romagnoli discloses the invention as claimed including a plurality of pistons mounted on a revolving drum. What Romagnoli does not disclose is the use of a gear arrangement to provide movement to the rotating rod. However, Rossi teaches that it is old and well known in the art to provide a rotational rod 76, with rotational drive means comprised of fixed gear 100, meshed with corresponding gear wheels 98 for the purpose of imparting rotational movement to the rotational rod (see figure 3 and col. 6, lines 8-17).

In claim 21, Romagnoli discloses the invention as claimed including arc-shaped walls 8 and 13, around the outer surface of the drum 1 (See figures 1 and 3).

3. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romagnoli in view of Mattos (US 2,684,186).

As the examiner understands the claim, Romagnoli discloses the invention as claimed including cam 23. What Romagnoli does not disclose is the cam comprised of different arc shaped section and an adjustable upper section.

However, Mattos teaches that it is old and well known in the art to provide a metering drum with a cam 38, having first and second arcuate portion 46 and 48, where the upper first portion 48 adjusts the piston 37 during operation. Additionally, the piston 37 is adjustable through bushing 54 (see figures 1-3, 11 and col. 6, line 38 – col. 7, line 3).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Romagnoli with the adjusting means as taught by Mattos for the purpose of varying the volume of product captured and dispensed.

4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Romagnoli in view of Lofman et al. (US 6,135,120).

Romagnoli discloses the invention as claimed except for the use of a vacuum operated belt conveyor. However, Lofman teaches that it is old and well known in the art to provide a belt conveyor 23 powered by suction means not shown for the purpose of holding an item in as stable condition (see figure 1 and col. 4, lines 28-64).

Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the invention of Romagnoli with the conveying means as taught by Lofman for the purpose of holding an item in as stable condition.

***Response to Arguments***

5. Applicant's arguments filed 10/20/2008 have been fully considered but they are not persuasive.

Applicant first argues on page 6 of the response that it is not obvious to one of ordinary skill in the art at the time the invention was made to have provided the primary reference of Romagnoli with the teaching of Rossi. Applicant asserts that the structure of Rossi comprised of a unitary mold and three in line cylinders could not be incorporated into the structure of Romagnoli, which discloses the use of a rotating wheel and radially arranged reciprocating and rotating pistons. This argument is not persuasive.

The examiner assert that the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Moreover, the applicant cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

The examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references

themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this instance, Romagnoli clearly discloses the use of a rotating metering drum comprised of an arc shaped recess and a plurality of reciprocating pistons arranged radially around the drum. The teaching of Rossi is also within the knowledge of one having ordinary skill in the art. Rossi has been utilized as a teaching because it discloses the use of a rotating and reciprocating tamper, which engages, forms and compacts a product prior to being encased inside an infuser material.

Therefore, the rejection is proper.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL R. DURAND whose telephone number is (571)272-4459. The examiner can normally be reached on IFP.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on 571-272-4467. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/PAUL R. DURAND/  
Primary Examiner, Art Unit 3721  
December 31, 2008